

Appl. No. 10/611,616
Response Dated May 3, 2006
Reply to Office Action of January 3, 2006

REMARKS

Summary

Claims 1-18 and 20-23 are currently pending in this application. Claims 3, 10, 15, and 21 have been amended. No new matter has been added. Favorable reconsideration and allowance of the standing claims are respectfully requested

Rejections under 35 U.S.C. § 112

Claims 3-5, 10-12, 15-17, and 21-23 are rejected under 35 U.S.C. § 112, second paragraph as being allegedly indefinite. Applicant respectfully traverses this rejection. In particular, Applicant states that the recitation of the term "frame boundary" is consistent in the dependent and independent claim pairings discussed by the Examiner.

However, notwithstanding the merits of this rejection, claims 3, 10, 15, and 21 have been amended. These amendments are made to more clearly recite features of the claimed invention, but not for reasons related to patentability. Withdrawal of these rejections are respectfully requested.

Rejections under 35 U.S.C. § 102

Claims 1-2, 6-9 and 13-14 are rejected under 35 U.S.C. § 102 as being allegedly anticipated by U.S. Patent No. 6,463,486 to Parry et al. ("Parry"). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the anticipation rejection.

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Applicant respectfully submits that to anticipate a claim under 35 U.S.C. § 102, the cited reference must teach every element of the claim. *See* MPEP § 2131, for example. Applicant submits that Parry fails to teach each and every element recited in claims 1-2, 6-9 and 13-14 and thus they define over Parry. For example, with respect to independent claims 1, 6, and 13, Parry fails to teach, among other things, determining a frame boundary for stored audio information.

On page 2 of the Office Action, the Examiner alleges that such features are disclosed by Parry at column 11, lines 59-64, and at column 12, lines 20-24. Applicant respectfully disagrees. These portions of Parry merely discuss positions within a circular buffer, such as logical positions, as well as head and tail pointers that reference beginning and end positions of the buffer.

As relied on by the Examiner, Parry does not disclose or suggest determining boundaries of stored frames. In fact, the portions of Parry identified by the Examiner merely discuss positions of a circular buffer. However, these portions of Parry do not discuss characteristics of information (e.g., frames) stored within the circular buffer.

Consequently, Parry fails to disclose all the elements or features of the claimed subject matter. Thus, Applicant respectfully requests that this rejection be withdrawn.

35 U.S.C. § 103

Claims 18 and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Parry. Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the obviousness rejection.

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Claims 18 and 20 recite features similar to those recited in claims 1, 6, and 13. Therefore, for reasons analogous to those presented above, Applicant respectfully submits that claims 18-20 are patentable subject matter over Parry. Accordingly, Applicant respectfully requests that this rejection be withdrawn.

Conclusion

For at least the above reasons, Applicant submits that pending claims are in condition for allowance. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of its allegations not specifically addressed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the claims from the cited references, taken alone or in combination. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

It is believed that claims 1-18 and 20-23 are in allowable form. The Examiner is invited to contact the undersigned by telephone to discuss any matter concerning this application.

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The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to the Credit Card Payment Form.

Respectfully submitted,

KACVINSKY LLC

s/John A. Harroun/s

John A. Harroun
Reg. No. 46,339
Under 37 CFR 1.34(a)

Dated: May 3, 2006

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CERTIFICATE OF MAILING/TRANSMISSION (37 CFR 1.8A)

I hereby certify that this correspondence is being transmitted by facsimile on the date shown below to the United States Patent and Trademark Office.

Deborah L. Higham

5/03/06
Date